

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.80 of 2015

Against the judgment of conviction, dated 04.12.2014, and order of sentenced dated 08.12.2014, passed by Mr. Jitendra Kumar Dubey, Additional District and Sessions Judge, V, West Champaran at Bettiah, in Trial No. 76 of 2010, arising out of Sikta P.S. Case No. 81 of 2010, N.D.P.S. Case No. 79 of 2010

=====

1. Mahangu Sah Son of Late Sitaram Sah Resident of Village - Satgarhi, P.S. Gopalpur, District West Champaran Appellant

Versus

1. The State of Bihar.

2. Union of India through I.G. S.S.B., Frontier Head Quarter, Patna

.... Respondents

=====

Appearance :

For the Appellant : M/S Veena Rani Prasad & Vishal Saurabh, Advs.

For the Union of India : Mr. Manoj Kumar, Central Govt., Standing Counsel

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

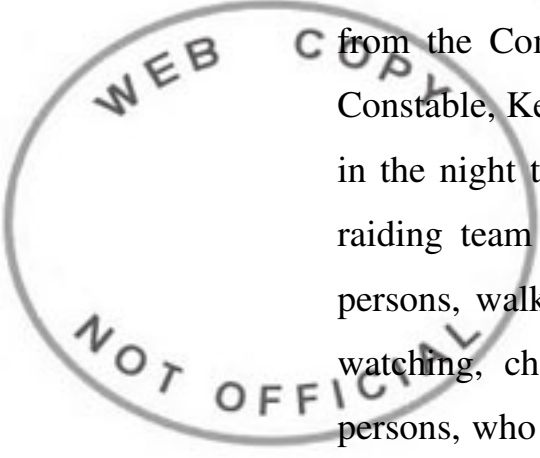
ORAL JUDGMENT

Date: 13-01-2016

Heard the learned counsel for the appellant and the Standing Counsel, Central Government.

2. The has been convicted under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, ((hereinafter referred to as, “the Act”) and sentenced to undergo rigorous imprisonment for ten years and a fine of rupees one lakh and in case of non-payment of fine to under go additional imprisonment for one years. The appellant has, further, been convicted under Section 22(c) of the Act and sentenced to undergo rigorous imprisonment for ten years and a fine of rupees one lakh and in case of non-payment of fine to under go for further imprisonment for one year. The appellant has, further, been convicted under Section 23(c) of the Act and has been sentenced to undergo rigorous imprisonment for ten years and fine of rupees one lakh and in case of non-payment of fine to under go additional imprisonment for one year. However, it has been ordered that all the sentences shall run concurrently.

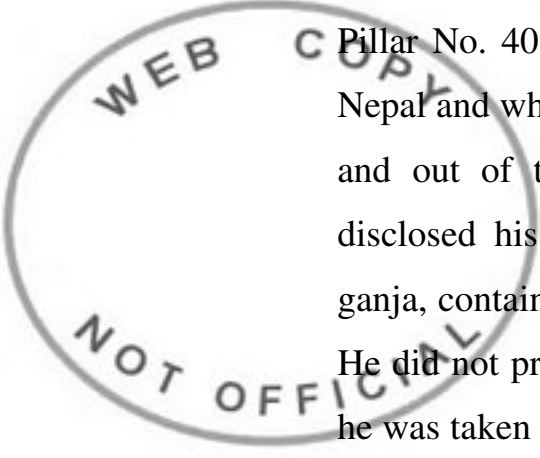
3. The prosecution case, as alleged in the first information



report by the informant, Amit Singh, Company Commander, Sashastra Seema Bal, posted at Sikta, West Champaran that he got an information from the Company and he constituted a team under the leadership of Constable, Keshav Bairagi, with five jawans to watch at village Sikta and in the night they heard the sound of walking on the water and then the raiding team allowed them to come near them and when the accused persons, walking on water, reached near the place where the team was watching, challenged them and asked to surrender, but, the accused persons, who were coming from Nepal, tried to escape and then the naka party or raiding party chased and caught hold of one person and from his possession eight packets of ganja weighing about 120 Kg were seized. On receiving the information, the informant reached at the place and enquired from the person, who was caught hold, disclosed his name as Mahangu Sah, son of late Sitaram, and did not produce any paper regarding the ganja recovered from his possession, but, disclose that the said ganja belonged to co-villagers Munni Lal Kushwaha and Rang Lal Yadav and, further, disclosed that the persons who were carrying these ganja were Munni Lal Kushwaha and his co-villager and six other persons of Nepal. The said person was caught hold of along with the ganja, handed over to the Officer-in-Charge of Sikta Police Station.

4. On the written report of Amit Singh, an endorsement was made for instituting a case for offence under Sections 20 and 22 of the Act with a direction to the Sub Inspector of Police, B.D. Singh, to investigate the case. The first information report was lodged, a seizure list prepared and the investigation proceeded. After the investigation, the charge sheet has been submitted, cognizance taken and after the cognizance the charges were framed for offence under Sections 20, 22(c) and 23(c) of the Act.

5. During the trial, four witnesses were examined by the prosecution. P.W. 1 is Keshav Bairagi, a Constable in Sashastra Seema



Bal, 27th Battalion, Narkatiyaganj, who was the member of the raiding party and has deposed that along with five jawans he was watching at Pillar No. 408/2, near Sikta village, he saw some persons coming from Nepal and when they challenged them, they left the articles and flee away and out of them one of the persons were chased and caught, who disclosed his name as Mahangu Sah and, thereafter, eight packets of ganja, containing in all about 120 Kg was recovered from his possession. He did not produce any paper and nor given any satisfactory reply, then, he was taken to the Camp, seizure list was prepared and has identified the person. However, in cross-examination, he stated that the sample was not taken before him from the seized ganja. P.W. 2 is Amit Singh, informant, supported the prosecution case. He has proved the seizure list, marked as Exhibit 1. he has proved the written application on the basis of which the first information report drawn, marked as Exhibit 2, and has stated that the seized ganja and accused along with the written application and seizure list was handed over to the Officer-in-Charge, Sikta Police Station. P.W. 3, Rajendra Singh Jadeja is also a member of raiding party. He has also supported the prosecution case regarding the watch with the five jawans and, thereafter, catching hold of one person, Mahangu Sah, who was coming along with others with ganja while they were flee away and, thereafter, preparation of seizure list. P.W. 4 is again a member of the raiding party and Constable of 27th Battalion of Sashastra Seema Bal, Narkatiyaganj, and has only supported the prosecution case regarding the recovery of ganja and preparation of seizure list.

6. However, the police officer, who instituted the case and the Officer-in-Charge of sikta Police Station where the ganja was handed over by the informant, has not been examined. Neither the investigating officer of the case has been examined nor the Officer-in-Charge of Sikta Police Station, who lodged the first information report, has been examined nor has the person, who took out the sample and sent the

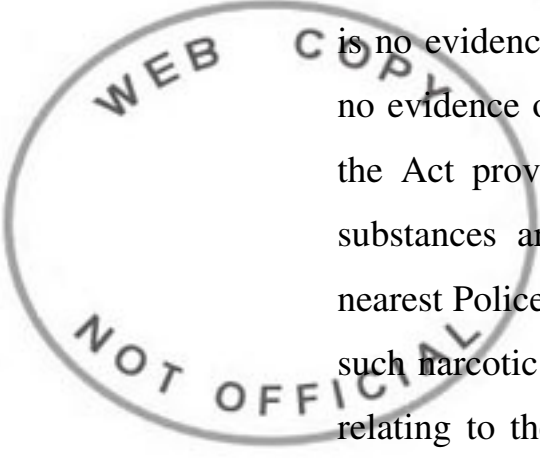
sample to the Forensic Science Laboratory, been examined. However, the Forensic Science Laboratory report has been proved and marked as Exhibit 3, formally.

7. The trial Court, taking into consideration the evidence of the witnesses, on the ground that 120 Kg of ganja was recovered from the possession of the appellant as well as taking the statement of the appellant, recorded by the Block Development Officer and, further, taking into consideration the Forensic Science Laboratory's report, convicted the appellant, as mentioned above.

8. The learned counsel for the appellant has challenged the order of conviction and sentence recorded by the trial Court on the ground that the ganja was not recovered from the conscious possession of the appellant. It has, further, been contended that there is no evidence that after the seizure of ganja, the said ganja was sealed. It has, further, been contended that there is no evidence that where the seized ganja was kept neither the Officer-in-Charge of Sikta Police Station has been examined nor there is any evidence that the ganja was kept in the Police Station nor even the malkhana register has been proved. It has, further, been contended that there is no evidence that whether the sample was taken from the seized ganja and neither the sample was taken before a Magistrate nor there is evidence that the sample of the ganja was sent from the said seized article. It has, further, been contended that neither the seized ganja has been produced before the Magistrate nor there is any compliance of Section 52A of the Act as no certification by any Magistrate regarding the seized ganja has been produced nor there is any report regarding the destruction has been produced that the seized ganja was ever destroyed. Hence, it is contended that there is no compliance of Section 52A, 55 or 57 of the Act, hence, it is not proper to rely upon the Forensic Science Laboratory report to indicate that the seized article was ganja, hence, the order of conviction and sentence has been challenged.

9. The learned Standing Counsel for the Central Government, however, contends that the report of the Forensic Science Laboratory indicates that a sample was sent and received in the office of the Forensic Science Laboratory, Patna, bearing memo no. 2226, dated 27.11.2010, and dispatch of a parcel per special messenger, Daffadar, Baban Singh, which was received in the office of the Forensic Science Laboratory on 13.12.2010, in connection with Sikta P.S. Case No. 81 of 2010, dated 16.09.2010, under Sections 20 and 22 of the Act, hence, it be treated that the said sample sent was the sample of the seized article which indicates that article seized was ganja.

10. However, taking into consideration the respective submissions, I proceed to consider the evidence of the witnesses in the light of submissions made. However, going into the question it is true that the prosecution case that the Company Commander, Sashastra Seema Bal, received information, put a vigilant team to keep vigil for controlling the smuggling of ganja and when the vigilant party learnt that a group of persons from Nepal is coming with the ganja and when they reached near them, challenged and even chased to catch hold of them, but, the persons who were smuggling ganja threw the ganja and tried to flee away, out of whom one person apprehended and the Sashastra Seema Bal then prepared a seizure list and produce the seized article along with the seizure list as soon as the person, who was apprehended. However, the prosecution case has proved to the effect that the raid was conducted and on vigil a person was apprehended along with 120 Kg of alleged ganja. However, there is no evidence in the entire record whether the said ganja, seized, were sealed with the seal of the Officer-in-Charge of the Police Station as indicated in the Act. However, neither the Officer-in-Charge of the Police Station where the seized ganja along with accused was produced has been examined nor the person, who investigated the case, has been examined and there is no evidence, at all, that where the ganja



seized and handed over to the Officer-in-Charge of Sikta Police Station. There is no evidence that the said ganja was kept in the seal cover. There is no evidence that who taken out sample from the said ganja. There is no evidence of compliance of Section 52A of the Act. Section 52A of the Act provides that as soon as the narcotic drugs and psychotropic substances are seized and forwarded to the Officer-in-Charge of the nearest Police Station, the Officer-in-Charge shall prepare an inventory to such narcotic drugs and psychotropic substances, containing such details relating to their description, quantity, quality, mode of packing, marks, number or such other identifying particulars of the narcotic drugs and psychotropic substances or the packing in which they were packed, country of origin and other particulars as the officer referred in sub section (1) may consider relevant to the identity of the narcotic drugs and psychotropic substances and, further, the officer, concerned, shall an application to a Magistrate for (a) certifying the correctness of the inventory so prepared (b) taking, in the presence of such Magistrate, photographs of such drugs or substance and certifying such photographs as true and (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn and when such an application is made by the officer, concerned, the Magistrate shall soon allow the application. However, there is no evidence that there is any certification of the article, seized, by the Magistrate. There is no evidence that regarding the correctness of the inventory prepared by a Magistrate there is no evidence that representative samples have been taken in accordance with law. Section 55 of the Act provides the Officer-in-Charge of a Police Station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized and shall affix his seal to the articles and to take sample or and from them and all samples so taken shall also be sent with the seal of the Officer-in-Charge of the Police

Station.

11. However, Section 57 of the Act provides that whenever any person makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. However, there is no evidence, at all, whether the samples were taken from the articles seized, further, neither the articles, seized, have been produced in the Court nor there is any certificate by a Magistrate that the articles seized were other produce nor there is any evidence that the said articles seized were destroyed or ordered to be destroyed and in compliance it was destroyed.

12. Having regard to the fact since there is no evidence that the sample taken from the articles, seized, hence, it is not proper and prudent to be relied upon the Forensic Science Laboratory report, hence, I find and hold that the prosecution has not been able to prove that report of Forensic Science Laboratory is with regard to sample taken from seized material so the order of conviction and sentence recorded by the trial Court is hereby **set aside** and the appeal is **allowed**.

13. Since the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

SA/-

U	√	T	√
---	---	---	---